IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 35700 of 2007(Y)

PETITIONER:

V.K.REGHUNATHAN ,S/O.V.K.KUNHIRAMAN,
MANAGING PARTNER,
M/S. V.K. KUNHIRAMAN GENERAL MERCHANT
AND COMMISSION AGENT, J.T.ROAD, VATAKARA,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.PRIYA VIJAYAN

RESPONDENTS:
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1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF TAXES, THIRUVANANTHAPURAM.

2. SALES TAX APPELLATE TRIBUNAL
ADDITIONAL BENCH, KOZHIKODE.

3. ASSISTANT COMMISSIONER
DEPARTMENT OF COMMERCIAL TAXES,
KOZHIKODE.

4. DEPUTY TAHSILDAR
REVENUE RECOVERY
VADAKARA, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 35700 OF 2007 Y
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Dated this the 7th day of December, 2007

J U D G M E N T

Against Ext.P1 assessment order for the year 2000-01, appeal filed before the 1st Appellate Authority was rejected by Ext.P2. Thereafter, an appeal was filed to the 2nd respondent and Ext.P3 is the memorandum of appeal. Along with the appeal, petitioner also filed Ext.P4 application for condoning the delay of 760 days and that was declined to be condoned by Ext.P6 order. Subsequently, the appeal itself was dismissed and it is in these circumstances, the writ petition has been filed by the petitioner seeking to quash Ext.P6 order and to direct the Tribunal to condone the delay.

2. In Ext.P6, two reasons are stated. One is that the certificates produced by the petitioner to prove his ailment as an explanation for the delay was not acceptable to the Tribunal. The second is that even if the reason stated by the petitioner was proved, still there were other partners, who could have prosecuted the case in time. It is on these two grounds that the request for condoning the delay has been rejected.

3. I have gone through Exts. P10 and P11 medical certificates that are relied on by the petitioner and which were produced before the Tribunal. Ext.P10 shows that the petitioner was suffering from certain serious ailments and was under treatment at the Christian Medical College, Vellore for a long time. Ext.P11 also shows that the petitioner was under prolonged Ayurvedic treatment on account of his ailments. The certificates and the other materials that were available before the Tribunal was declined to be accepted holding that the certificates will not prove that the petitioner was prevented by sufficient reasons from not filing the second appeal within the stipulated period.

4. On an anxious reading of the order, I do not find that the Tribunal has assigned any reason for this conclusion. A reading of these certificates show that the petitioner was under treatment for a long time. Once the correctness of that statement is accepted, that could be a sufficient reason to explain the delay involved in filing the appeal. There is yet another statement in Ext.P6 to the effect that the delay could have occurred on account of the delay in preparing the statutory audit report. This conclusion is only an inference and that too without any supporting material. Therefore, the first reason stated by the

Tribunal does not appear to be correct.

5. The second reason is that the petitioner was only a Managing Partner and even if he was unwell, there were other persons to prosecute the case. In order to canvass before this court that this reasoning is incorrect, has produced as Exts.P8 and P9 partnership deed and a death certificate. The partnership deed shows that apart from the petitioner the other partner was none other than his mother. Ext.P9 certificate shows that she expired on 22/9/02. From this, it is obvious that apart from the petitioner there was only one partner and that partner had expired as early as on 22/9/02. If this be the position, the reasoning of the Tribunal that other partners could have prosecuted the case is also incorrect. Therefore, I am not satisfied that the Tribunal was right in its approach.

In view of the above, I feel that the petitioner has made out a case for condonation of delay. Accordingly, quashing Ext.P6, I dispose of this writ petition directing that the 2nd respondent shall reconsider the matter in the light of the observations that are made above.

ANTONY DOMINIC, JUDGE.

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